

AMENDED IN ASSEMBLY JUNE 18, 2003

AMENDED IN SENATE MAY 20, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 1008

Introduced by Senator Machado

February 21, 2003

An act to amend Sections 999, 999.2, 999.5, 999.7, and 999.9 of, ~~and to add Section 999.14 to,~~ the Military and Veterans Code, and to add Section 10115.9 to the Public Contract Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1008, as amended, Machado. Veterans: contracts: disabled veteran business enterprises.

Under existing law, any state governmental entity that awards contracts for professional bond services and for construction and certain related purposes has annual statewide participation goals of not less than 3% for disabled veteran business enterprises, as defined. For ~~purpose~~ *purposes* of these provisions, existing law defines a “disabled veteran” as a veteran, as specified, with a service-connected disability who is a resident of the state.

This bill would *modify the definition of disabled veteran business enterprise, and* specify that a limited liability company may be certified as a disabled *veteran* business enterprise for these purposes if that company is wholly owned by one or more disabled veterans. The bill would also change the definition of “disabled veteran” to instead mean a veteran, as specified, with a service-connected disability of at least 10% who *is a resident of, and* is domiciled in, the state.

This bill would deem any disabled veteran business enterprise that rents equipment to an awarding department to be an equipment broker, as defined, unless the equipment is owned solely by one or more disabled veterans, who submit evidence in support of that fact. The bill would also prohibit state funds expended for equipment rented from equipment brokers, as specified, from being credited toward the 3% goal.

This bill would require a disabled veteran business enterprise that is a broker, as defined, and that obtains a contract under these provisions to make certain disclosures to the awarding department.

The bill would also require a disabled veteran business enterprise and its owners to submit copies of all tax returns, as specified, or be subject to certain penalties for noncompliance.

Existing law requires the administering agency and the awarding department to establish methods of monitoring adherence to the participation goals.

This bill would additionally require the awarding department to verify the experience and qualifications of the disabled veteran owners and managers of every certified disabled veteran business enterprise, and prohibit an awarding department from relying on the administering agency's certification of a disabled veteran business enterprise if that department knows that the disabled veteran business enterprise does not maintain the certification requirements. The bill would also prohibit state funds expended on a contract with a disabled veteran business enterprise that does not meet and maintain the certification requirements from being credited toward the 3% goal.

Existing law requires that annual reports regarding the achievement of the participation goals be submitted by awarding departments and the Office of Small Business Certification and Resources to specified entities.

This bill would require that the awarding departments' reports include the percentage of participation by brokers and agents.

Existing law imposes a civil penalty with respect to, among other things, fraudulently obtaining certification as a disabled veteran business enterprise.

This bill would provide, among other things, that it is unlawful to knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract. It would ~~also~~ make it unlawful to establish, or knowingly aid in the establishment of, or



exercise control over, a firm found to have violated the foregoing prohibitions. *It would also make it unlawful to willfully and knowingly make or prepare any statement or document that is fraudulent or false as to any material matter.* The bill would, in addition to civil penalties, make it a misdemeanor to violate all of the foregoing prohibitions, thereby imposing a state-mandated local program.

The bill would also ~~permit a court to order the~~ *require a* defendant to pay all ~~or a portion of the~~ plaintiff's costs and attorneys' fees in a civil action brought for violations of these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 999 of the Military and Veterans Code
- 2 is amended to read:
- 3 999. As used in this article, the following definitions apply:
- 4 (a) "Administering agency" means the Treasurer in the case of
- 5 contracts for professional bond services, and the Department of
- 6 General Services' Office of Small Business Certification and
- 7 Resources, formerly known as the Office of Small and Minority
- 8 Business, in the case of contracts governed by Section 999.2.
- 9 (b) "Awarding department" means any state agency,
- 10 department, governmental entity, or other officer or entity
- 11 empowered by law to issue bonds or enter into contracts on behalf
- 12 of the State of California.
- 13 (c) "Bonds" means bonds, notes, warrants, certificates of
- 14 participation, and other evidences of indebtedness issued by or on
- 15 behalf of the State of California.
- 16 (d) "Broker" or "agent" means any individual or entity or any
- 17 combination thereof that does not have title, possession, control,
- 18 or risk of loss of materials, supplies, services, or equipment
- 19 provided to an awarding department, unless the materials,

1 *supplies, services, or equipment are owned solely by one or more*
2 *disabled veterans.*

3 (e) “Contract” includes any agreement or joint agreement to
4 provide professional bond services to the State of California or an
5 awarding department. “Contract” also includes any agreement or
6 joint development agreement to provide labor, services, material,
7 supplies, or equipment in the performance of a contract, franchise,
8 concession, or lease granted, let, or awarded for and on behalf of
9 the State of California.

10 ~~(e)–~~

11 (f) “Contractor” means any person or persons, regardless of
12 race, color, creed, national origin, ancestry, sex, marital status,
13 disability, religious or political affiliation, or age, or any sole
14 proprietorship, firm, partnership, *limited liability company*, joint
15 venture, corporation, or combination thereof who submits a bid
16 ~~and~~ *or* enters into a contract with a representative of a state agency,
17 department, governmental entity, or other officer empowered by
18 law to enter into contracts on behalf of the State of California.
19 “Contractor” includes any provider of professional bond services
20 who enters into a contract with an awarding department.

21 ~~(f)–~~

22 (g) “Disabled veteran” means a veteran of the military, naval,
23 or air service of the United States, including, but not limited to, the
24 Philippine Commonwealth Army, the Regular Scouts (“Old
25 Scouts”), and the Special Philippine Scouts (“New Scouts”), with
26 a service-connected disability of at least 10 percent ~~and who is~~
27 ~~domiciled in~~ *who is a resident of, and domiciled in*, the State of
28 California.

29 ~~(g)–~~

30 (h) (1) “Disabled veteran business enterprise” means a
31 business concern certified by the administering agency as meeting
32 *and maintaining* all of the following requirements:

33 (A) It is ~~a~~ *one of the following*:

34 (i) ~~A sole proprietorship at least 51 percent owned by one or~~
35 ~~more disabled veterans or, in the case of a publicly owned~~
36 ~~business, at least 51 percent of its stock is owned by one or more~~
37 ~~disabled veterans; a subsidiary which is wholly owned by a parent~~
38 ~~corporation, but only if at least 51 percent of the voting stock of~~
39 ~~the parent corporation is owned by one or more disabled veterans;~~
40 ~~or a joint venture in which at least 51 percent of the joint venture’s~~

~~management and control and earnings are held by one or more disabled veterans, or more disabled veterans.~~

(ii) *A publicly or privately owned corporation for which at least 51 percent of the voting stock and at least 51 percent of the value of all stock is owned by one or more disabled veterans.*

(iii) *A subsidiary corporation that is wholly owned by a parent corporation described in clause (ii).*

(iv) *A partnership or joint venture for which at least 51 percent of the ownership, voting rights, assets, income, and expense is held and owned by one or more disabled veterans.*

(v) *A limited liability company that is wholly owned by one or more disabled veterans.*

(B) The management and control of the daily business operations ~~are~~ *is performed* by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.

~~(C) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.~~

(C) The business concern is not an equipment broker.

(2) Notwithstanding paragraph (1), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business concern that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business concern shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business concern is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

~~(h)~~

(i) *“Equipment” means construction equipment, excavators, motor graders, backhoes, bulldozers, transports, pilot cars, potable water trucks and trailers, nonpotable water trucks and trailers, gray water trucks and trailers, fire engines, fuel trucks, refrigerator trucks and trailers, dry storage trailers, forklifts,*

1 *mobile kitchens and support units, tents, portable toilets,*
2 *dumpsters, office trailers, photocopy trailers, clerical trailers,*
3 *computers and facsimile machines, telephones, generators, light*
4 *towers, buses, service vehicles, special vehicles, ambulances,*
5 *chainsaws, base camp equipment, shower units, portable wash*
6 *stations, mobile laundry units, aircraft, aircraft support vehicles*
7 *and trailers, and all specialized firefighting equipment.*

8 (j) “Equipment broker” means any broker or agent who rents
9 equipment to an awarding department.

10 (k) “Foreign corporation,” “foreign firm,” and
11 “foreign-based business” means a business entity that is
12 incorporated or has its principal headquarters located outside the
13 United States of America.

14 ~~(i)~~

15 (l) “Goal” means a numerically expressed objective that
16 awarding departments and contractors are required to make efforts
17 to achieve.

18 ~~(j)~~

19 (m) “Management and control” means effective and
20 demonstrable management of the *daily operations of the* business
21 entity.

22 ~~(k)~~

23 (n) “Professional bond services” include services as financial
24 advisers, bond counsel, underwriters in negotiated transactions,
25 underwriter’s counsel, financial printers, feasibility consultants,
26 and other professional services related to the issuance and sale of
27 bonds.

28 SEC. 2. *Section 999.2 of the Military and Veterans Code is*
29 *amend to read:*

30 999.2. (a) Notwithstanding any other provision of law,
31 contracts awarded by any state agency, department, officer, or
32 other state governmental entity, including school districts when
33 they are expending state funds for construction, professional
34 services (except those subject to Chapter 6 (commencing with
35 Section 16850) of Part 3 of Division 4 of Title 2 of the Government
36 Code), materials, supplies, equipment, alteration, repair, or
37 improvement shall have statewide participation goals of not less
38 than 3 percent for disabled veteran business enterprises. These
39 goals apply to the overall dollar amount expended each year by the
40 awarding department.

1 **(b)** A disabled veteran business enterprise that rents equipment
2 to an awarding department shall be deemed to be an equipment
3 broker unless the equipment is owned solely by one or more
4 disabled veterans. If the equipment is owned by one or more
5 disabled veterans, each disabled veteran owner shall, prior to
6 performance under any contract, submit to the awarding
7 department a declaration signed by the disabled veteran owner
8 stating that the owner is a disabled veteran and providing the
9 name, address, telephone number, and tax identification number
10 of the disabled veteran owner. Each disabled veteran owner shall
11 submit his or her state and federal income tax returns to the
12 administering agency pursuant to subdivision (f) as if he or she
13 were a disabled veteran business enterprise. The disabled veteran
14 business enterprise of a disabled veteran owner who fails to submit
15 his or her tax returns will be deemed to be an equipment broker.

16 **(c)** A disabled veteran business enterprise that rents equipment
17 to an awarding department shall, prior to performing the contract,
18 submit to the awarding department a declaration signed by each
19 disabled veteran owner and manager of the enterprise stating that
20 the enterprise obtained the contract by representing that the
21 enterprise was a disabled veteran business enterprise meeting and
22 maintaining all of the requirements of a disabled veteran business
23 enterprise. The declaration shall include the name, address,
24 telephone number, and tax identification number of the owner of
25 each piece of equipment identified in the contract.

26 **(d)** State funds expended for equipment rented from equipment
27 brokers pursuant to contracts awarded under this section may not
28 be credited toward the 3 percent goal.

29 **(e)** A disabled veteran business enterprise that is a broker or
30 agent and that obtains a contract pursuant to subdivision (a) shall,
31 prior to performing the contract, disclose to the awarding
32 department that the business is a broker or agent. The disclosure
33 shall be made in a declaration signed and executed by each
34 disabled veteran owner and manager of the enterprise, declaring
35 that the enterprise is a broker or agent, and identifying the name,
36 address, and telephone number of the principal for whom the
37 enterprise is acting as a broker or agent.

38 **(f) (1)** A disabled veteran business enterprise, and each owner
39 thereof, shall, at the time of certification, submit to the
40 administering agency complete copies of the enterprise's and

1 owner's state and federal income tax returns for the three previous
2 tax years.

3 (2) A disabled veteran business enterprise, and each owner
4 thereof, shall submit to the administering agency complete copies
5 of the enterprise's and owner's state and federal income tax returns
6 that have a postcertification due date, on or before the due date,
7 including extensions.

8 (3) A disabled veteran business enterprise that, and each owner
9 thereof who, has not submitted to the administering agency
10 complete copies of the enterprise's and owner's state and federal
11 income tax returns for the three tax years preceding certification
12 nor for each postcertification tax year for which a return was
13 required to be filed, shall have 90 days to submit those returns.

14 (4) A disabled veteran business enterprise that fails to comply
15 with any provision of this subdivision shall be prohibited from
16 participating in any state contract until the disabled veteran
17 business enterprise complies with the provisions of this
18 subdivision. Funds expended involving a disabled veteran
19 business enterprise during any period in which that enterprise is
20 not in compliance with the provisions of this subdivision shall not
21 be credited toward the awarding department's 3 percent goal.

22 (g) A disabled veteran business enterprise that fails to maintain
23 the certification requirements set forth in this article shall
24 immediately notify the awarding department and the
25 administering agency of that failure by filing a notice of failure that
26 states with particularity each requirement the disabled veteran
27 business enterprise has failed to maintain.

28 SEC. 3. Section 999.5 of the Military and Veterans Code is
29 amended to read:

30 999.5. (a) The administering agency shall establish a method
31 of monitoring adherence to the goal specified in Section 999.1,
32 including requiring a followup report from all contractors upon the
33 completion of any sale of bonds.

34 (b) The awarding department shall establish a method of
35 monitoring adherence to the goals specified in Section 999.2.

36 (c) The awarding department shall verify the experience and
37 qualifications of the disabled veteran owners and managers of
38 every certified disabled veteran business enterprise.

39 (d) (1) An awarding department may not rely upon the
40 administering agency's certification of a disabled veteran business

enterprise, and shall suspend all contracts awarded to that disabled veteran business enterprise, if the awarding department has knowledge that the disabled veteran business enterprise does not meet and maintain the certification requirements.

(2) An awarding department may not credit toward the department's 3 percent goal state funds expended on a contract with a disabled veteran business enterprise that does not meet and maintain the certification requirements.

(e) The administering agency shall adopt rules and regulations, including standards for good faith efforts, for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

SEC. 4. Section 999.7 of the Military and Veterans Code is amended to read:

~~999.7. (a) Notwithstanding Section 7550.5 of the Government Code, on~~ (1) On January 1 of each year, each awarding department shall report to the Governor, the Legislature, the Office of Small Business Certification and Resources, and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year. *Each report shall identify the percentage of participation by brokers and agents.*

(2) If the awarding department has not met the established goals ~~are not met~~ for that year, the awarding department shall report to the Legislature, the Office of Small Business Certification and Resources, and the Department of Veterans Affairs the reasons for the awarding department's inability to achieve the goals and *shall identify steps it shall take in an effort to achieve the goals.*

~~(b) Notwithstanding Section 7550.5 of the Government Code, on~~ On April 1 of each year, the Office of Small Business Certification and Resources shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

SEC. 5. Section 999.9 of the Military and Veterans Code is amended to read:

999.9. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently

1 obtaining or retaining or attempting to obtain or retain,
2 certification as a disabled veteran business enterprise for the
3 purpose of this article.

4 (2) Willfully and knowingly make a false statement with the
5 intent to defraud, whether by affidavit, report, or other
6 representation, to a state official or employee for the purpose of
7 influencing the certification or denial of certification of any entity
8 as a disabled veteran business enterprise.

9 (3) Willfully and knowingly obstruct, impede, or attempt to
10 obstruct or impede, any state official or employee who is
11 investigating the qualifications of a business entity ~~which~~ *that* has
12 requested certification as a disabled veteran business enterprise.

13 (4) Knowingly and with intent to defraud, fraudulently obtain,
14 attempt to obtain, or aid another person in fraudulently obtaining
15 or attempting to obtain, public moneys, *contracts, or funds*
16 *expended under a contract, that are awarded by any state agency,*
17 *department, officer, or other state governmental agency,* to which
18 the person is not entitled under this article.

19 (5) Knowingly and with intent to defraud, fraudulently
20 represent participation of a disabled veteran business enterprise in
21 order to obtain or retain a bid preference or a state contract.

22 (6) *Willfully and knowingly make or subscribe to any*
23 *statement, declaration, or other document that is fraudulent or*
24 *false as to any material matter, whether or not that falsity or fraud*
25 *is committed with the knowledge or consent of the person*
26 *authorized or required to present the declaration, statement, or*
27 *document.*

28 (7) *Willfully and knowingly aid or assist in, or procure, counsel,*
29 *or advise, the preparation or presentation of a declaration,*
30 *statement, or other document that is fraudulent or false as to any*
31 *material matter, regardless of whether that falsity or fraud is*
32 *committed with the knowledge or consent of the person authorized*
33 *or required to present the declaration, statement, or document.*

34 (8) *Willfully and knowingly fail to file any declaration or notice*
35 *with the awarding agency that is required by Section 999.2.*

36 (9) Establish, or knowingly aid in the establishment of, or
37 exercise control over, a firm found to have violated any of
38 paragraphs (1) to ~~(5)~~ (8), inclusive.

39 (b) Any person who violates any of the provisions of
40 subdivision (a) shall be guilty of a misdemeanor punishable by

1 imprisonment in the county jail not exceeding six months or by a
 2 fine not exceeding one thousand dollars (\$1,000), or by both. In
 3 addition, the person shall be liable for a civil penalty ~~not to exceed~~
 4 *of not less than* ten thousand dollars (\$10,000) *nor more than thirty*
 5 *thousand dollars (\$30,000)* for the first violation, and a civil
 6 penalty ~~not to exceed~~ *of not less than thirty thousand dollars*
 7 *(\$30,000) nor more than fifty thousand dollars (\$50,000)* for each
 8 additional or subsequent violation. ~~The court may order the~~
 9 ~~defendant to pay all or a portion of the plaintiff's costs and~~
 10 ~~attorneys' fees~~ *A defendant who violates any of the provisions of*
 11 *subdivision (a) shall pay all costs and attorney's fees incurred by*
 12 *the plaintiff in a civil action brought pursuant to this section.*

13 (c) (1) Any person who violates subdivision (a) ~~shall, if~~
 14 ~~certified as a disabled veteran business enterprise, have the~~
 15 ~~business' certification revoked for a period of not less than three~~
 16 ~~years, and shall, in addition to the penalties provided for in~~
 17 ~~subdivision (b), be suspended from bidding on, or participating as~~
 18 ~~either a contractor, subcontractor, or supplier in, any state contract~~
 19 ~~or project for a period of not less than three years. However, for~~
 20 ~~an additional or subsequent violation the period of suspension~~
 21 ~~shall be extended for a period of not less than five years. The~~
 22 ~~certification revocation shall apply to the principals of the business~~
 23 ~~and any subsequent businesses formed by those, and if certified as~~
 24 *a disabled veteran business enterprise, have the business'*
 25 *certification revoked for a period of not less than three years. An*
 26 *additional or subsequent violation shall extend the periods of*
 27 *suspension and revocation for a period of not less than five years.*
 28 *The suspension and revocation shall apply to the principals of the*
 29 *business and any subsequent business formed or financed by, or*
 30 *affiliated with, those principals.*

31 (2) Any business or person who fails to satisfy the penalties,
 32 *costs, and attorney's fees* imposed pursuant to subdivision (b) ~~and~~
 33 ~~paragraph (1)~~ shall be prohibited from further contracting with the
 34 state until the penalties are satisfied.

35 (d) The awarding department shall report all alleged violations
 36 of this section to the Office of Small ~~and Minority Business~~
 37 *Business Certification and Resources*. The office shall
 38 subsequently report all alleged violations to the Attorney General
 39 who shall determine whether to bring a civil action against any
 40 person or firm for violation of this section.

1 (e) The office shall monitor the status of all reported violations
2 and shall maintain and make available to all state departments a
3 central listing of all firms and persons who have been determined
4 to have committed violations resulting in suspension.

5 (f) No awarding department shall enter into any contract with
6 any person suspended for violating this section during the period
7 of the person's suspension. No awarding department shall award
8 a contract to any contractor utilizing the services of any person as
9 a subcontractor suspended for violating this section during the
10 period of the person's suspension.

11 (g) The awarding department shall check the central listing
12 provided by the office to verify that the person or contractor to
13 whom the contract is being awarded, or any person being utilized
14 as a subcontractor or supplier by that person or contractor, is not
15 under suspension for violating this section.

16 ~~SEC. 3. Section 999.14 is added to the Military and Veterans~~
17 ~~Code, to read:~~

18 ~~999.14. A limited liability company may be certified as a~~
19 ~~disabled veteran business enterprise pursuant to this article if the~~
20 ~~limited liability company is wholly owned by one or more disabled~~
21 ~~veterans.~~

22 ~~SEC. 4.—~~

23 *SEC. 6.* Section 10115.9 is added to the Public Contract Code,
24 to read:

25 10115.9. A limited liability company may be certified as a
26 disabled veteran business enterprise pursuant to this article if the
27 limited liability company is wholly owned by one or more disabled
28 veterans.

29 ~~SEC. 5.—~~

30 *SEC. 7.* No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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